

# EXHIBIT A

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

YIM, et al.,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

No. 2:18-cv-736-JCC

BRIEF OF GRE DOWNTOWNER LLC AS  
*AMICUS CURIAE* IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION TO  
DEFENDANT'S CROSS-MOTION FOR  
SUMMARY JUDGMENT

**CONTENTS**

	<u>Page</u>
<u>I. INTRODUCTION</u> .....	2
<u>II. STATEMENT OF FACTS</u> .....	2
<u>III. ARGUMENT</u> .....	7
<u>A.</u> The Ordinance Inhibits a Landlord's Ability to Provide Safe and Affordable Housing for Low-Income Individuals Living in Downtown Seattle and Is Unduly Oppressive and Irrational. ....	7
<u>B.</u> The Ordinance Violates the First Amendment and Is Vague and Unworkable. ....	7
<u>IV. CONCLUSION</u> .....	8

BRIEF OF GRE DOWNTOWNER LLC - 1  
2:18-cv-736-JCC

## I. INTRODUCTION

*Amicus curiae* GRE Downtowner LLC (“GRE”)<sup>1</sup> appreciates the Court’s permission to submit an *amicus* brief in this matter and the opportunity to share information with the Court about its experience owning and operating a federally assisted housing project in downtown Seattle for the last six and one-half years. As detailed below, its experience since the City of Seattle’s Fair Chance Housing Ordinance, SMC 14.09 (the “Ordinance”) went into effect has been drastically different than its experience during the prior years.

## II. STATEMENT OF FACTS

The Addison on Fourth (“the Addison”) is an apartment building located in Seattle’s Chinatown-International District. Built in 1911 as a hotel, the building was closed in the early 1960s and then reopened in 1969 as housing for low-income residents. In 2012, GRE purchased the property for \$12 million. It invested \$27 million more in major renovations to convert the property to 254 apartment homes,<sup>2</sup> artist lofts, and musician studios. GRE’s goal with the renovations was to maintain the historic character of the building, while bringing the systems and finishes up to current code and standards.<sup>3</sup>

Although the acquisition and renovations were financed primarily with tax exempt bonds issued by the Washington State Housing Finance Commission, the project is federally subsidized. Provided the project continues to comply with certain requirements of the Internal Revenue Code, interest on the bonds will remain exempt from federal income tax. The requirements include limits on the income of apartment residents and limits on the amount of rent that can be charged for an apartment.

---

<sup>1</sup> Simultaneously with the filing of its motion for leave to submit an *amicus curiae* brief, GRE filed a Corporate Disclosure Statement as required by LCR 7.1.

<sup>2</sup> 25 of the apartment homes are reserved for tenants with disabilities.

<sup>3</sup> The renovation project qualified for federal historic and solar energy tax credits.

1 Compliance with substantially identical restrictions on income levels and maximum rent  
 2 amounts allows the project also to qualify for federal low-income housing tax credits. The Addison  
 3 currently provides housing for Seattle residents earning up to 60 percent of the area's median  
 4 income (\$45,600 for one person). The monthly rent for a studio apartment is capped at \$1,162,  
 5 while the maximum monthly rent for a one-bedroom unit is \$1,245. The income and rent limits  
 6 are tied to the Area Median Income calculations set by the U.S. Housing and Urban Development  
 7 ("HUD") for the Seattle-Bellevue, WA HUD Metro Fair Market Rent Area. Rental payments for  
 8 many of the apartments are subsidized with federal Housing Choice Vouchers (formerly Section  
 9 8) and other rental assistance programs.

10 When the renovations were completed, the Addison re-opened in November 2013 under  
 11 the management of American Management Services Northwest LLC ("American"), a third-party  
 12 manager. American served as manager of the property until mid-May 2019, when GRE  
 13 Management LLC ("GRE Management") took over.<sup>4</sup> GRE Management is affiliated with  
 14 Goodman Real Estate, Inc., a privately held real estate investment company that specializes in  
 15 multifamily, retail and commercial real estate and has been headquartered in Seattle for 30 years.  
 16 The goal of the Addison's owner and management teams is, and always has been, to provide safe,  
 17 clean, comfortable, stable, and affordable housing for the Addison's residents.

18 During the first years after the Addison's reopening, that goal was met. New and long-  
 19 term residents were happy with the renovations and respectful of the rules for occupancy. The  
 20 project was economically viable and a going concern.

21 But six months into 2018, there was a noticeable change. Uncertain whether the Ordinance,  
 22 which went into effect in February 2018, applied to the Addison at all or in part,<sup>5</sup> management  
 23

---

24 <sup>4</sup> When GRE bought the property, the building was called The Downtowner. GRE renamed it The Addison on  
 25 Fourth. During the renovations, GRE's management team worked closely with tenants to keep as many of them in  
 26 place as possible. The building officially re-opened in November 2013 when the City issued a new Certificate of  
 Occupancy.

<sup>5</sup> As discussed further below, the Ordinance does not define the term "federally assisted housing," which is found in  
 SMC 14.09.115.B.

1 elected to abide by the new prohibition against obtaining criminal background information for  
 2 existing and prospective new tenants. Before that change in procedure, to determine an  
 3 individual's eligibility to become a tenant, management had in place an application process that  
 4 included a criminal background check by a reporting agency.<sup>6</sup> If the applicant had a history of  
 5 criminal convictions, the agency would look at the type of crime and length of time since the crime  
 6 was committed and determine whether the applicant satisfied pre-established criteria (which were  
 7 tied to an assessment as to whether the criminal conduct indicated a demonstrable risk to resident  
 8 safety and/or property). Then, without including any underlying information about the criminal  
 9 history, the reporting agency would notify management whether an applicant was "approved" (i.e.,  
 10 passed the screening process), should be "declined" (did not pass the screening process), or might  
 11 be "approved with conditions" (such as an increased deposit). The procedure was intended to  
 12 eliminate bias, but also allowed some protection of the landlord.<sup>7</sup> With the discontinuation of that  
 13 procedure, living conditions at the Addison declined precipitously.

14 Over the past two years, the number of 911 calls from the Addison has more than doubled.  
 15 Fights are breaking out in the lobby of the building; used needles, trash, and feces are left in  
 16 stairways and hallways; fire alarms are being set off repeatedly in the middle of the night. In  
 17 response, the Addison's management has installed cameras in the hallways on every floor and in  
 18 other public areas, upgraded door hardware, installed a controlled access system for the elevator,  
 19 given residents fobs that allow them access only to their floor, and replaced the main lobby door.  
 20 It has hired additional janitors and armed security guards. These new security measures have

---

21 <sup>6</sup> Alternatively, if the applicant was a referral from the Seattle Housing Authority, the applicant was pre-screened by  
 22 the agency pursuant to a memorandum of understanding between the agency and the Addison's management. That  
 23 agreement between the agency and the Addison's management has been discontinued, however, and the agency now  
 screens only for lifetime sex offender registration and conviction of manufacturing or producing methamphetamines  
 on the premises of federally assisted housing.

24 <sup>7</sup> Cf. U.S. HUD Office of General Counsel Application of Fair Housing Act Standards to the Use of Criminal  
 25 Records by Providers of Housing and Real-Estate Related Transactions (April 4, 2016), available at  
 26 [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDARD.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDARD.PDF) (acknowledging that a housing  
 provider's use of criminal history to deny housing to particular prospective tenants may not constitute unlawful  
 intentional discrimination if necessary to achieve a substantial, legitimate, nondiscriminatory interest of the landlord,  
 such as protecting property and the safety of other residents).

1 greatly increased operating costs, yet problems remain rampant and the Addison's annual  
2 insurance deductible has climbed from \$5,000 to \$100,000.

3 Building managers started to keep a growing list of individuals banned from the building  
4 for starting fights or damaging property. A staff member was assaulted. Employees are afraid to  
5 work alone, so they now work in teams. Turnover is 400 percent.

6 In November 2019, a resident who had been living at the Addison for six months stabbed  
7 his guest in the chest during an argument. It was only after the resident was arrested that building  
8 managers learned the resident had several outstanding arrest warrants. Other residents have sold  
9 drugs out of their apartments. Over 500 people have lived in the Addison over the past two years,  
10 but management finds out about a resident's criminal past only when the police arrive and arrest  
11 someone on the premises.

12 Evictions have tripled in the past two years, but that, too, has not solved the problems.  
13 While it would seem a simple matter to evict a problem tenant who is endangering others,  
14 damaging property, and violating the lease agreement, the process can take several months. Costs  
15 associated with a single eviction can easily climb to \$4,000, not including lost rents and the  
16 expense of refurbishing a trashed apartment. In the last 12 months alone, the Addison has had to  
17 pursue judicial evictions of tenants in 42 of its apartments. That is more than 16 percent of the  
18 apartments in the building. Thirty of the 42 evictions were for behavioral issues: a stabbing;  
19 allowing drug dealers to take over the apartment; bringing trespassers into the building;  
20 harassing/assaulting staff; being aggressive with neighbors; damaging the building; and  
21 prostitution.

22 All the problems are leading longtime residents to move out. One example is "A," an  
23 African American woman just reaching retirement age. She has lived at the Addison since 2004,  
24 when it was the Downtowner. She was thrilled with the changes made after GRE's acquisition  
25 and renovations. Her apartment was completely updated, and the lobby was modernized and  
26 decorated with plants, art, sofas, armchairs, and a television. She felt safe. That is no longer the

1 case and she is planning to leave soon. “B” is a 70-year-old man who works in housekeeping at  
2 T-Mobile Park. A former counselor for homeless veterans, he has lived at the Addison for five  
3 years and has seen the changes. He says he doesn’t know the people who live on his floor anymore  
4 because the turnover is so high. In his view, the “good people” are leaving. Online reviews show  
5 the Addison’s reputation for being a safe, clean, and comfortable place to live has suffered greatly.  
6 Tenant turnover has averaged 50 percent during each of the last two years.

7 It is telling to examine comparative metrics for the periods two years before and two years  
8 after the Ordinance went into effect:

- 9 • Negative social media reviews increased 186 percent
- 10
- 11 • The average occupancy declined over 5 percent
- 12
- 13 • The average monthly number of evictions climbed from 1.48 to 3.96 (168 percent)
- 14
- 15 • The average monthly evictions expense climbed from \$1,442 to \$2,983 (107 percent)
- 16
- 17 • The average monthly total security costs climbed from \$2,350 to \$9,581 (308 percent)
- 18
- 19 • The average monthly non-recurring capital expenditures climbed from \$4,573 to
- 20 \$15,704 (243 percent)
- 21
- 22 • The project has moved from cash flow positive to cash flow negative – a drop of over
- 23 400 percent
- 24
- 25
- 26

22 Over the same four-year period, average monthly rents increased only three percent per  
23 year, or about \$30. This is a rent-controlled project and expenses must be managed in relationship  
24 to the rents. The expenses are out of control because of the Ordinance and the project is rapidly  
25 becoming unsustainable.

### III. ARGUMENT

#### A. The Ordinance Inhibits a Landlord's Ability to Provide Safe and Affordable Housing for Low-Income Individuals Living in Downtown Seattle and Is Unduly Oppressive and Irrational.

The City of Seattle is refusing to let private landlords screen applicants for criminal history to ensure that new tenants will not threaten the health, safety, or right to peaceful enjoyment of the community by other tenants or threaten physical damage to property. That refusal is imposing an unduly oppressive and irrational burden on Seattle landlords and thereby violating the substantive due process rights of those landlords. *See* authorities cited in Plaintiffs' motion for summary judgment (Dkt. No. 23) at 17-21, Plaintiffs' opposition to the City's cross motion and reply (Dkt. No. 48) at 27-30, and Plaintiffs' supplemental brief (Dkt. No. 66) at 1-8; *see also* Amicus Brief of the National Apartment Association (Dkt. No. 39-1) at 12-18.

#### B. The Ordinance Violates the First Amendment and Is Vague and Unworkable.

The Ordinance's ban on inquiring about an individual's criminal background violates the free speech protections of the First Amendment. *See* authorities cited in Plaintiffs' motion for summary judgment (Dkt. No. 23) at 5-17 and Plaintiffs' opposition to the City's cross motion and reply (Dkt. No. 48) at 2-22.

The Ordinance also is unconstitutionally vague because it lacks specific information regarding the core conduct that is supposed to be prohibited. *See* Brief of the National Consumer Reporting Association as Amicus Curiae (Dkt. No. 44-1) at 10-16. And it lacks specific information as to the parties to whom it is to be applied. It says it "does not apply to an adverse action taken by landlords of federally assisted housing subject to regulations that require denial of tenancy," SMC 14.09.115.B, but it contains no definition of "landlords of federally assisted housing," *see id.*; *see also* SMC 14.09.010. Is the exemption applicable when a landlord owns an apartment building that is financed with tax exempt bonds? When the landlord was granted federal historic and solar energy tax credits? When the project qualifies for federal low-income housing tax credits? When rental payments made by tenants are subsidized with federal Housing Choice



Vouchers? When most tenants in the building, but not all, receive subsidies from federal Housing Choice Vouchers or other rental assistance programs? Is the exemption applicable only when the landlord receives a Housing Choice Voucher for a specific tenant, and with respect to the apartment occupied or to be occupied by that tenant? Or is the exemption applicable only when a public housing authority is the landlord?

The Ordinance not only is vague, it also is unworkable. The City is taking the position that the Ordinance's exemption for "providers of federally-assisted housing" is "limited to their decisions to deny tenancy (or take other 'adverse actions') where federal regulations require that decision," but providers of federally-assisted housing "remain subject to the Ordinance's other requirements." *See* City of Seattle's Combined Opp'n to Pls.' Mot. for Summ. J and Cross Mot. for Summ. J. (Dkt. No. 48) at 15-16. In other words, landlords of federally assisted housing may deny tenancies to individuals convicted of manufacturing or producing methamphetamines on the premises of federally assisted housing, but these landlords are not allowed to make any inquiries (on their own or through third party reporting agencies) that would elicit information telling them whether individuals had ever been convicted of that crime. Obviously, a landlord cannot reject a prospective tenant on this ground if the landlord does not know of the conviction.

#### IV. CONCLUSION

The Addison is in serious jeopardy. The five on-site managers are not social workers. They are persons trying to meet GRE's goal of providing safe, clean, comfortable, stable, and affordable housing for low-income Seattle residents. The Ordinance is unlawfully hindering achievement of that goal.

GRE respectfully urges the Court to grant Plaintiffs' motion for summary judgment and deny the City of Seattle's cross motion for summary judgment.

1 DATED: May 7, 2020.

2 STOEL RIVES LLP

3  
4 s/ Jill D. Bowman

Jill D. Bowman, WSBA No. 11754

5 jill.bowman@stoel.com

6 STOEL RIVES LLP

7 600 University Street, Suite 3600

8 Seattle, WA 98101

Telephone: 206.624.0900

9 Facsimile: 206.386.7500

10 *Attorneys for GRE Downtowner LLC*

**CERTIFICATE OF SERVICE**

I certify that on this day I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Brian T. Hodges  
Ethan W. Blevins  
Pacific Legal Foundation  
255 South King Street, Ste. 800  
Seattle, WA 98104  
425-576-0484  
[bth@pacificlegal.org](mailto:bth@pacificlegal.org)  
[eblevins@pacificlegal.org](mailto:eblevins@pacificlegal.org)  
*Attorneys for Plaintiffs*

Melissa R. Lee  
Robert S. Chang  
Ronald A. Peterson Law Clinic  
1112 E. Columbia St.  
Seattle, WA 98122  
206-398-4394  
[leeme@seattleu.edu](mailto:leeme@seattleu.edu)  
[changro@seattleu.edu](mailto:changro@seattleu.edu)  
*Attorneys for Amici Curiae Fred T. Korematsu  
Center for Law and Equality and ACLU-WA*

Hillary Madsen  
Kimberlee L. Gunning  
Nicholas Brian Allen  
Columbia Legal Services  
101 Yesler Way, Ste. 300  
Seattle, WA 98104-2552  
206-464-0838  
[hillary.madsen@columbialegal.org](mailto:hillary.madsen@columbialegal.org)  
[kim.gunning@columbialegal.org](mailto:kim.gunning@columbialegal.org)  
[nick.allen@columbialegal.org](mailto:nick.allen@columbialegal.org)  
*Attorneys for Amici Curiae Pioneer Human  
Services and Tenants Union of Washington*

Michael J. Saltz  
Jacobsen, Russell, Saltz, Nassim & De La  
Torre, LLP  
1880 Century Park East, Suite 900 Los  
Angeles, CA 90067 [msaltz@jrsnd.com](mailto:msaltz@jrsnd.com)  
310-446-9900  
and Jeffrey E. Bilanko  
Carroll, Biddle, & Bilanko, PLLC 801  
2nd Avenue, Suite 800  
Seattle, WA 98104  
206-489-5549  
[jbilanko@cbblegal.com](mailto:jbilanko@cbblegal.com)  
*Attorneys for Amicus Curiae NCRA*

Eric Dunn  
National Housing Law Project  
919 E. Main Street, Ste. 610  
Richmond, VA 23219  
415-546-7000 ext. 3102  
[edunn@nhlp.org](mailto:edunn@nhlp.org)  
*Attorney for Amici Curiae National Housing  
Law Project and Sargent Shriver National  
Center on Poverty Law*

Douglas E. Smith Littler  
Mendelson, P.C.  
600 University Street, Suite 3200  
Seattle, WA 98101-3122  
206-623-3300  
[desmith@littler.com](mailto:desmith@littler.com)  
*Attorneys for Amici Curiae CDIA/NAPBS*

Dated May 7, 2020.

s/ Karrie Fielder  
Legal Assistant